IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 20977 of 2006(V)

PETITIONERS:

1. **DR.A. MAHESWARAN PILLAI, PRINCIPAL, SREE VIDYADHIRAJA HOMEOPATHIC MEDICAL COLLEGE NEMAM, TRIVANDRUM.**

2. **DR.S. VELAPPAN PILLAI, VICE PRINCIPAL, SREE VIDHYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE, NEMAM, TRIVANDRUM.**

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT, HEALTH & FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.**

2. **THE PRINCIPAL AND CONTROLLING OFFICER HOMOEOPATHIC MEDICAL COLLEGE, IRINIMUTTOM, TRIVANDRUM.**

3. **SREE VIDYADHIRAJA HOMEOPATHIC MEDICAL COLLEGE, NEMAM, TRIVANDRUM, REP. BY ITS MANAGER AND SECRETARY, SREE VIDYADHIRAJA VIDYA SAMAJAM, CHETTIKULANGARA, TRIVANDRUM-1.**

4. **DR.K. RAJEEV, S/O. P.R. KRISHNA PILLAI PROFESSOR AND HEAD OF DEPARTMENT, PRACTICE OF MEDICINES, SREE VIDHYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE, NEMAM P.O., THIRUVANANTHAPURAM.**

5. **DR.G. SOMASEKHARAN PILLAI, PROFESSOR & HEAD OF DEPARTMENT, DEPT.OF MATERIA MEDICA, SREE VIDHYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE, NEMAM P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI. S. JAYAKRISHNAN
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 20977/2006(V)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE JUDGMENT DATED 3.4.06 IN W.P. © NO. 17818/06 OF THIS HON'BLE COURT.**
EXT. P2	**:**	**COPY OF COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT IN W.P.(C) NO. 21416/05 DATED 27.3.06 BEFORE THIS HON'BLE COURT.**
EXT. P3	**:**	**COPY OF THE LETTER NO. SVVS/HMC/27 DATED 12.4.06 ISSUED BY THE 3RD RESPONDENT.**
EXT. P4	**:**	**COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT DATED 30.6.06.**
EXT. P5	**:**	**COPY OF THE GO(Rt) NO. 2319/2006/H&FWD. DATED 4.8.06 ISSUED BY THE 1ST RESPONDENT.**
EXT. P6	**:**	**COPY OF THE MEMO DATED 4.8.06 VIDE NO. SVVS(HMC) 131/2006 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**
EXT. P7	**:**	**COPY OF THE GO(MS) NO. 184/2003/H&FWD DATED 3.9.03 ISSUED BY THE 1ST RESPONDENT.**
EXT. P8	**:**	**COPY OF THE GO(RT) NO. 3643/2003/H&FWD DATED 24.12.2003 ISSUED BY THE 1ST RESPONDENT.**
EXT. P9	**:**	**COPY OF THE REPORT SUBMITTED BY THE 2ND RESPONDENT VIDE NO. 3009/C1/2002/GHMCT DATED 14.5.04.**
EXT. P10	**:**	**COPY OF THE ORDER NO. 2322/J2/2004/H&FWD DATED 21.6.04 ISSUED BY THE 1ST RESPONDENT.**
EXT. P11	**:**	**COPY OF THE JUDGMENT DATED 30.3.2000 IN OP NO. 8334/1997-P OF THIS COURT.**
EXT. P12	**:**	**COPY OF THE ORDER NO. 3009/C1/2002/GHMCT DATED 30.4.04 ISSUED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.**
EXT. P13	**:**	**COPY OF THE JUDGMENT DATED 19.9.06 IN W.P. © NO. 24469/2006 OF THIS HON'BLE COURT.**
EXT. P14	**:**	**COPY OF THE JUDGMENT DATED 6.10.06 IN W.P. © NO. 26242/2006 OF THIS HON'BLE COURT.**
EXT. P15	**:**	**COPY OF THE RELEVANT EXTRACT OF THE ORDER NO. G.O. (Ms) NO. 235/97/H&FWD DATED 12.8.97 ISSUED BY THE 1ST RESPONDENT.**

WP(C).No. 20977/2006(V)

EXT. P16	**:**	**COPY OF THE ORDER NO. G.O. (Rt) 959/2001/H&FWD DATED 31.3.2001 ISSUED BY THE 1ST RESPONDENT.**
EXT. P17	**:**	**COPY OF THE JUDGMENT DATED 25.11.02 IN O.P. NO. 35150/2002 OF THIS HON'BLE COURT.**

// True Copy //

P.A. to Judge.

smp

KURIAN JOSEPH, J.

W.P. (C). NO. 20977 OF 2006

Dated this the 28th day of September, 2007.

J U D G M E N T

Whether the petitioners are entitled to continue in service as of right till they attain the age of 60 years is the question to be considered in this case.

2. The Direct Payment System was introduced affecting the petitioners with effect from 01.09.2002 in the college. As per the Direct Payment System, the staff including the petitioners are to be governed by Kerala Service Rules. Under Kerala Service Rules, the staff is to retire from service on attaining the age of 55 years. Prior to the introduction of the Direct Payment System, the staff was governed by the Grant-in-aid Rules which permitted them to continue upto 60 years.

3. According to the petitioners, they were not granted any option. But the fact remains that the petitioners did not challenge the introduction of Direct Payment System obviously because they were the beneficiaries of Direct Payment System. True the petitioners had crossed the age of 55 on the introduction of the Direct Payment System. But the fact remains

that they are the beneficiaries of Direct Payment System since they are brought under Kerala Service Rules and they are entitled to get pension.

4. Sri. Jaju Babu, counsel for the petitioners vehemently contended that in all other Homoeo colleges, staff were permitted to continue upto 60 years, limiting their pension upto 55 years. In the counter affidavit as well as the impugned order it is stated that such continuance was based on orders issued by this Court and not as permitted by the Government.

5. Be that as it may, the entitlement of the staff, on the introduction of the Direct Payment System, as per Kerala Service Rules is only to continue in service upto 55 years. Though this Court directed the Government to reconsider their stand in the light of the policy apparently deviated in the case of the staff of other medical colleges, by the impugned order the Government has declined to grant any relief to the petitioners stating mainly that the continuance of the staff of other homoeo colleges in service is not as permitted by the Government. There was no deviation by the Government from their policy. Such staff happened to continue in service based on the orders passed by

this Court. However, in their case also, pension is limited only to 55 years. It is seen that in Exhibit P1 judgment in the case of the petitioners this Court had made it clear that so long as the petitioners are in service, they should be paid salary.

6. It is seen from the impugned Exhibit P5 order that the Government passed the order dated 03.09.2003 retrospectively introducing Direct Payment System in the college where the petitioners worked with effect from 01.09.2002. In the case of other homoeo colleges when the Direct Payment System was thus introduced with retrospective effect, the staff who had crossed the age of 55 were permitted to continue upto 60 years, based on the interim orders passed by this Court.

7. It is seen from Exhibit P10 that the staff in the same college were permitted to continue upto 60 years. Be that as it may, in view of the fact that the order introducing the Direct Payment System with effect from 01.09.2002 was issued only on 03.09.2003, there appears to be a genuine grievance with regard to the retrospective termination of the petitioners. The petitioners have attained the age of superannuation as per Kerala Service Rules on 31.03.2002 and 31.05.2002 respectively.

However, they are seen relieved from their duties only with effect from 04.08.2006. Therefore, it is only just, fit, fair and reasonable that they are also granted similar treatment as in the case of other staff in other homoeo colleges as well as the staff in the same homoeo college atleast upto the date of their actual discontinuance. For that matter it is not necessary to relegate the petitioners again to the Government since there were several rounds of litigation in the same matter.

Therefore, it is declared that the petitioners shall be treated to have been in service till they are relieved on 04.08.2006 for all purposes except pension and pensionary benefits which shall be limited to 55 years of age. Consequential benefits arising out of the declaration as above including the arrears of salary shall be paid to the petitioners within a period of three months from the date of production of a copy of this judgment. The pension and pensionary benefits shall also be fixed and disbursed within the said period.

This writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

smp